United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 934

Case No. 1032: ABBOUD ET AL.

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Khalil Fadel Abboud, Taha Hussein Ali, Zakariya Ali Shehabi, Hassan Mahmoud Ghannam, Ass'ad Khalil Abu Khamis, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997, 28 February and 31 October 1998 the time-limit for the filing of an application to the Tribunal;

Whereas, on 21 July 1998, the Applicants filed an application requesting the Tribunal:

> "i. [To rescind] decisions of termination (Applicants [Abboud, Shehabi, Ghannam and Abu Khamis]), and the decision of serving of two written censures to Applicant [Ali].

ii. [To reinstate] Applicants [Abboud, Shehabi, Ghannam and Abu Khamis] to duty effective the date of their suspension, and [to consider] the period of their cessation, as a special leave with full pay plus due interest.

iii. Should Respondent refrain from reinstating Applicants [Abboud, Shehabi, Ghannam and Abu Khamis] ... to compensate them for their due salaries and separation benefits due until judgement has been ordered, [as well as] for the severe injury caused to Applicants, to be paid in US dollars at the rate available to UN at the time of their separation.

iv. [To pay] compensation to Applicant [Ali], estimated at US$ 12,000 for injury sustained due to arbitrary termination Respondent admitted when he reinstated him.

v. [To pay] due travel subsistence allowance due to Applicant [Ali].

vi. [To pay] counseling fees and secretarial expenses estimated at US$ 2,000."

Whereas the Respondent filed his answer on 13 April 1999;

Whereas the Applicants filed written observations on 30 May 1999;

Whereas, on 19 October 1999, the Applicants submitted an additional document, on which the Respondent submitted a reply on 27 October 1999;

Whereas the facts in the case are as follows:

The Applicant Abboud entered the service of UNRWA on 6 February 1982, on a temporary indefinite appointment as an Area staff member, as an English Teacher "A" at Um El-Fahem School, Damascus Area in the Syrian Arab Republic (SAR). Effective 1 February 1991, the Applicant was transferred to the post of Area Officer, Central (AOC).

The Applicant Ali entered the service of UNRWA on 16 November 1988, on a temporary indefinite appointment as an Area staff member, as a Clerk "C" in the Hama Sub-Area Office.

The Applicant Shehabi entered the service of UNRWA on 1 April 1987, on a temporary indefinite appointment as an Area staff member, as Health Centre Clerk at Homs.

The Applicant Ghannam entered the service of UNRWA on 1 September 1987, on a temporary indefinite appointment as an Area staff member, as a Clerk "C" in the Lattakia Office.

The Applicant Abu Khamis entered the service of UNRWA on 1 January 1988, on a temporary indefinite appointment as an Area staff member, as an Engineer "A" (also referred to as "Maintenance Engineer") in the Damascus Field Office.

On 25 April 1995, following reports of irregularities in UNRWA's Special Hardship Programme (provision of food rations, cash and other assistance to the most needy Palestine refugees), the Director UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status to refugees in Dera'a (the South Area), and the Agency's distribution system. The BOI submitted a report on 21 May 1995 where it stated, *inter alia*, that the irregularities it found in the Area Office South "[are] possibly symptomatic of what is transpiring in other areas of the Syria field, and as such [it] would recommend further inquiries into the Agency's Operations in other areas". On 1 June 1995, the Director of UNRWA Affairs addressed a strictly confidential memorandum to the Field Administration Officer, referring to his decision of 25 April 1995 to convene a BOI and stating that he had decided to again convene a BOI, this time to "examine irregularities in the Central Area relating to the following:

(a) A reported loss of 917 kgs of flour during the March 1995 distribution.

(b) Reports by the local authorities of illegal rations being received and possible misappropriation of cash assistance.

(c) Reports of poor construction in progress for 27 shelter rehabilitation projects in Homs."

On 4 June 1995, the Director of UNRWA Affairs advised the Applicant Abboud (the AOC) that charges of misconduct had been made against him and that, pending investigation of those charges, he was suspended from duty with pay effective that day.

On 28 June 1995, the BOI submitted a detailed report to the Director of UNRWA Affairs on the first two of its terms of reference, which was followed by an annex dated 21 August 1995, dealing with the construction and rehabilitation of 27 shelters by the Agency in Homs for Special Hardship Cases (SHC). In the first part of the report, the BOI made findings against the Applicants Abboud, Ali, Shehabi and Ghannam. In the conclusions the BOI stated that it "found that inadequate control procedures and disregard for Agency Technical Instructions in the administration of the SHC programme created the climate for theft to occur." In the annex, it made findings against the Applicant Abu Khamis, finding the quality of construction of the shelters poor and the workmanship unsatisfactory.

The Applicant Abboud

The BOI concluded that the Applicant Abboud had attempted to camouflage the theft of 917 kgs of flour during the March 1995 distribution of rations, failed to follow up a report made to him about distribution irregularities, failed to report that a staff member (the Applicant Shehabi) was in the business of buying and selling rations, allowed the Distribution Team Leader to have relatives working on the Distribution Team, kept money that had been overpaid to a temporary assistant clerk, failed to report a vehicle accident in an UNRWA car and allowed another staff member (the Applicant Ali) to use routinely an Agency vehicle for private use without recording such private mileage.

On 6 July 1995, the Director of UNRWA Affairs advised the Applicant Abboud of the findings of the BOI and of his decision to terminate his appointment for misconduct,

pursuant to Area staff regulation 10.2 and Area staff rule 110.1, effective close of business on that day.

On 1 August 1995, the Applicant Abboud wrote to the Director of UNRWA Affairs and requested reversal of the decision to terminate his appointment for misconduct. On 31 August 1995, the Director advised the Applicant Abboud that he had reviewed the decision but saw no reason to change it.

On 5 September 1995, the Applicant Abboud lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 14 January 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

16. In its deliberations, the Board examined all documents made available to it including the Appellant's personal file, and came out with the following:

A. By reference to the Administration's reply, the Board noted that the Administration's ... decision to terminate the Appellant's appointment for misconduct pursuant to the Area staff rule 110.1 was not based on sufficient evidence to incriminate the Appellant to the extent of termination.

B. By reference to the Appellant's personal file the Board noted that most of his Periodic Reports were rated very good '4' a matter which is inconsistent with the Administration's allegations.

C. The Board noted that the Appellant's request to forward an explanation of the reported loss was in response to a formal fax from the Supply and Transport Department, SAR. It was merely an explanation that came after documenting the loss and not prior to it.

D. As for the incident of the overpaid Temporary Assistant, the Board took note of the Appellant's testimony in which he stated the Appellant tried to make arrangements to return the money but he was told to solve the problem himself. However, the way he dealt with this money, though apparently without bad intentions, is not correct especially from an Area Officer. The whole incident remains irrelevant to the case under investigation.

E. Based on the above, the Board is convinced that the Board of Inquiry did not establish, beyond a reasonable doubt, that the Appellant's actual involvement in the irregularities in the Central Area.

IV. RECOMMENDATION

17. In view of the above and without any prejudice to any party the Board unanimously makes its recommendation that the administrative decision appealed against be reviewed."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Abboud and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board addressed in detail only two of the Board of Inquiry's findings concerning you, one of which it disagreed with (failing to follow up a report about distribution irregularities), and in the other (taking money overpaid to a temporary assistant) it opined was irrelevant to the Board of Inquiry's investigation. In relation to the balance of the Board of Inquiry's findings, including that you attempted to camouflage a loss of commodities, failed to report an accident in an UNRWA car, failed to report that another staff member was in the business of buying and selling rations and allowed a staff member to use an UNRWA vehicle on a no cost basis, the Board concluded that the Board of Inquiry did not establish that you were involved in the distribution irregularities in the Central Area because there was insufficient credible evidence of your guilt and you had previously received good ratings in your periodic reports. It accordingly recommended that your appeal be upheld and that the disciplinary action taken against you be reversed.

As the Joint Appeals Board did not apparently dissect and examine the evidence given by the Board of Inquiry in any detail, I cannot accept its conclusions as to the strength of that evidence in preference to that of the Board of Inquiry which saw and heard all of the evidence as it was being given and was able to draw conclusions accordingly. Therefore, I have rejected the Board's conclusions and recommendations and I dismiss your appeal."

The Applicant Ali

The BOI found that the Applicant Ali had been untruthful in connection with a transfer of commodities from Ham to Homs in February 1995, and concluded his "entire

testimony could be equally flawed." It found that he failed to establish a proper accounting for the proceeds of the sale of cartons left over after distributions and had routinely used an Agency vehicle without declaring private mileage.

On 6 July 1995, the Director of UNRWA Affairs advised the Applicant Ali that in light of the findings of the BOI, he had decided to terminate his appointment for misconduct pursuant to Area staff regulation 10.2 and Area staff rule 110.1, effective close of business on that day.

On 30 July 1995, the Applicant Ali wrote to the Director of UNRWA Affairs and requested reversal of the decision to terminate his appointment for misconduct. On 28 August 1995, the Director of UNRWA Affairs advised the Applicant Ali that he had reviewed the decision but saw no reason to change it.

On 31 August 1995, the Applicant Ali lodged an appeal with the JAB. The JAB submitted its report on 16 January 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

13. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. The Board noted that the Administration's decision to terminate the Appellant's appointment for misconduct was utterly based on the fact that the Appellant was involved in irregularities uncovered during the investigation in respect of the distributions of rations for the Special Hardship Cases Programme.

B. The Board took note of the incident in which the Appellant took the UNRWA vehicle ... on Thursday afternoons to his home in Hama, without declaring any [private mileage], also the Appellant did not produce any evidence which indicated that the use of this UNRWA car was for work purposes.

C. As for the proceeds of cartons left over after each distribution, the Appellant admitted to the Board of Inquiry that he actually sold the cartons

without documentation of this transaction by invoices and evidence was the money the Appellant gave to the Board of Inquiry.

D. However, although the contraventions mentioned in paragraphs B & C above are substantiated, the Board notes that both are irrelevant to the issues under investigation.

IV. RECOMMENDATION

14. In view of the foregoing and without any prejudice to any party, the Board unanimously makes its recommendations that the decision appealed against be reviewed."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Ali and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board noted that you had used an Agency vehicle for private purposes without declaring private mileage and that you had not adopted proper accounting procedures in relation to the sale of cartons left over after distributions. However, it was of the opinion that these matters were irrelevant to the issues under investigation by the Board of Inquiry and were not the basis for the termination of your services. Accordingly, the Board recommended that your appeal be upheld.

I agree with the Board of Inquiry that there is no evidence that you were involved in any irregularity in respect of the distribution under investigation. Further, I am not convinced that there is unequivocal evidence that you lied to the Board. In relation to the other issues on which the termination of your services was based, namely misusing an Agency vehicle and failing to keep proper accounting records for the sale of cartons, I believe that termination for misconduct was an unduly severe punishment. Accordingly, I accept the recommendation of the Joint Appeals Board and allow your appeal, but in lieu of termination for misconduct, I have directed that two written censures be sent to you in respect of [your] misuse of an Agency vehicle and poor accounting practices. You will be contacted by the Administration in relation to the implementation of my decision."

On 19 June 1997, the Applicant Ali was reinstated into the service of the Agency in the post of Clerk "C". His reinstatement was approved notwithstanding that he was unable to

repay the Provident Fund benefits that he had received upon the termination of his services. The Applicant Ali also received payment of his salary for the period between the date of his separation until the date of his reinstatement.

On 19 October 1997, the Applicant Ali was served with two letters of censure relating to his failure to keep proper accounting records for the sale of cartons left over from distributions and for the misuse of an Agency vehicle.

The Applicant Shehabi

The BOI found that the Applicant Shehabi was involved in the business of buying and selling rations for a number of years despite being advised on several occasions that his business activities were a conflict of interest with his duties as a staff member. It also found that the Applicant Shehabi had received Special Hardship rations to which he was not entitled. It concluded "that the Agency's image had been compromised for a long time and that [the Applicant's] conduct was incompatible with his status as an UNRWA staff member." The report further indicated: "The BOI took note of a multi-story building ... and were informed by [the Applicant Shehabi that] it belongs to him. The BOI concluded that [the Applicant] is, in fact, in the business of buying and selling rations and that he used his position to enrich himself and his family."

On 6 July 1995, the Director of UNRWA Affairs advised the Applicant Shehabi of the BOI's findings and of his conclusion that the Applicant Shehabi had compromised the Agency's image by dealing in or appearing to deal in UNRWA rations. Accordingly, the Director of UNRWA Affairs decided to terminate the services of the Applicant Shehabi in the interest of the Agency, pursuant to Area staff regulation 9.1 and Area staff rule 109.1, effective close of business on that day.

On 17 July 1995, the Applicant Shehabi wrote to the Director of UNRWA Affairs and sought reversal of the decision to terminate his services. On 31 August 1995, the Director of UNRWA Affairs advised the Applicant Shehabi that he had reviewed the decision and that he saw no reason to change it.

On 3 September 1995, the Applicant Shehabi lodged an appeal with the JAB. The JAB submitted its report in January 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

13. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. With reference to the letter ... dated 6 July 1995, the Board noted that the Appellant was terminated in the interest of the Agency because he was buying and selling UNRWA rations in Homs, plus receiving UNRWA rations using Special Hardship Cases Cards.

B. As for the Appellant's buying and selling rations, the Board noted that there was [not] sufficient evidence clear to the Board that would incriminate him except hearsay. With reference to the Appellant's personal file, the Board found no documents pertaining to his attention being drawn not to be engaged in such an activity.

C. The Board took note that though the Appellant's duties included verification of patient's eligibility for medical services prior to their admission to the Health Centre, this fact, per se, is not sufficient evidence that the Appellant dealt with rations.

D. The fact that the Appellant absented himself from work without authorization does not prove that he used the absence for the purpose of going to the nearby distribution centre. The fact that his supervisor, the Medical Officer, testified to this having taken place for 'about twenty times' without any documentation or action does not render this testimony credible or acceptable.

IV. RECOMMENDATION

14. In view of the foregoing and without any prejudice to any party, the Board unanimously makes its recommendation that the administrative decision appealed against be reversed."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Shehabi and informed him, in part, as follows:

> "... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that all evidence that you were involved in buying and selling rations was hearsay. It noted that no document drawing your attention to this activity appeared [in] your personal file. It also noted that although you might have absented yourself from duty without authority, this did not of itself indicate that your absence was related to any dealing with rations. Accordingly, the Board recommended that your appeal be upheld.
>
> The Board appears to have misread the Board of Inquiry's report on the issue of your dealing with rations. One written warning about that activity was annexed to the report, another was seen by the Board of Inquiry but was subsequently removed from your file. The Area Officer also gave evidence that he gave a number of oral warnings to you about your activities and that he caught you taking rations with about 20-25 ration cards. Taken together with the Board of Inquiry's other conclusions such as your presence at a particular distribution, I am of the opinion that there is sufficient credible evidence that you were involved in the business of buying and selling rations. Accordingly, I do not accept the Board's conclusion and recommendation and your appeal is dismissed.
>
> ..."

The Applicant Ghannam

The BOI found that the Applicant Ghannam had fraudulently altered the Distribution List of January 1995 in Lattakia and had been untruthful to the BOI about his reason for doing so. It also found that he had hired his relatives as casual employees and continued hiring a bus from a relative for the transportation of staff, when only one staff member needed such transportation.

On 6 July 1995, the Director of UNRWA Affairs advised the Applicant Ghannam of the BOI's findings and of his decision to terminate his appointment for misconduct, pursuant to Area staff regulation 10.2 and Area staff rule 110.1, effective close of business on that day.

On 26 July 1995, the Applicant Ghannam wrote to the Director of UNRWA Affairs and requested reversal of the decision to terminate his appointment for misconduct. On 24 August 1995, the Director of UNRWA Affairs advised the Applicant Ghannam that he had reviewed the decision but saw no reason to change it.

On 4 September 1995, the Applicant Ghannam lodged an appeal with the JAB. The JAB submitted its report on 16 January 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

13. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. The Board noted that the so called forged coupons were coupons of [a] different nature resulting from a mistake of recording that was corrected. No sufficient evidence of forgery is provided.

B. The Board also noted that the Appellant admits having provided a casual job of two days for his brother and not having hired any other relative. The Board of Inquiry refers to Area staff regulation 104.3 which is not relevant in this case. It only deals with appointment of Area staff members.

C. The Board is of the opinion that concluding a contract with a bus owner is the responsibility of the Supply and Transport Department not the Appellant's. There is no evidence as to the bus owner being a relative of the Appellant.

D. Reference to a previous investigation done two years before the date of the Board of Inquiry's report does not establish a relation between the Appellant and the subject of that investigation.

IV. RECOMMENDATION

14. In view of the foregoing, and without any prejudice to any party, the Board unanimously makes its recommendation that the administrative decision appealed against be reversed."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Ghannam and informed him as follows:

> "... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the issue of 'forged' coupons was in fact a mistake and was not a forgery by you. In relation to you hiring your brother as a casual labourer, the Board noted that this was not contrary to the Rules and finally, in relation to the hiring of the bus, the Board was of the opinion that this matter was not your responsibility, nor was there evidence that the bus was hired from a relative of yours. It accordingly recommended that the decision to terminate your appointment be reviewed and reversed.
>
> In relation to the issue of the hiring of relatives, I agree with the Board that Area staff rule 104.3 is not applicable to the hiring of casual employees. Further, in relation to the hire of the bus, I note that in correspondence you provided a reasonable explanation and that, more importantly, allegations of wrongdoing in relation thereto were not put to you by the Board of Inquiry. However, in relation to the most significant issue, that of the forgery of coupons onto the Lattakia Distribution list of January 1995, you admitted doing so to the Board of Inquiry. Your explanation as to why you did so was not accepted by the Board of Inquiry and the Joint Appeals Board has provided no indication as to why it characterizes your actions as a mistake. Accordingly, I reject the conclusion and recommendation of the Joint Appeals Board and your appeal is dismissed."

The Applicant Abu Khamis

On 21 August 1995, the BOI submitted an annex to its report of 28 June 1995. The annex dealt with the third item of its terms of reference - "reports of poor construction for 27 shelter rehabilitation projects in Homs". Much to its "dismay", the BOI found "that indeed to a layman's eyes, the quality of construction appeared to be poor and the workmanship not of a satisfactory standard". It noted that a Senior Structural Engineer (SSE) visited the site at the BOI's request. He agreed that the construction was substandard and that the results of tests performed on concrete samples from the site showed that all failed to meet minimum density requirements.

The BOI found that the Applicant Abu Khamis was "primarily responsible for the practically total failure of the shelters construction project". It noted that Applicant Abu

Khamis "took it upon himself to supervise the construction. Having thus pre-empted the site supervision functions which were to be carried out by the AME [Area Maintenance Engineer], he failed to exercise due diligence to ensure that acceptable work was being executed on the shelters." The BOI noted that he had a role in the cover-up of the substandard construction in that after being requested to inspect 13 shelters he had pronounced them satisfactory when, according to the SSE an engineer could and should have seen that they were defective. The BOI also expressed concern about statements attributed to the Applicant that "Palestine Refugees are unworthy of such assistance by the Technical Department for Shelter construction" and another statement he had allegedly made to the Director of UNRWA Affairs "If you [could] as Director render a service to the Field Technical Office, I would stop shelter assistance."

On 5 September 1995, the Director of UNRWA Affairs advised the Applicant Abu Khamis that he had reviewed the annex to the report of the BOI and concluded that his appointment should be terminated in the interest of the Agency, in accordance with Area staff regulation 9.1.

On 4 October 1995, the Applicant Abu Khamis wrote to the Director of UNRWA Affairs and requested annulment of the decision to terminate him, reinstatement and compensation for the injury caused to him. On 22 October 1995, the Officer-in-Charge of UNRWA Affairs, advised the Applicant Abu Khamis that he had reviewed the decision to terminate his appointment and saw no reason to change it.

On 21 November 1995, the Applicant Abu Khamis lodged an appeal with the JAB. The JAB submitted its report on 14 April 1997. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

13. In its deliberations, the Board examined all documents cited before it, including the Appellant's personal file and came out with the following:

(a) The Board noted that the Administration's decision to terminate the Appellant's services in the interest of the Agency was utterly based on the findings of the report of the Board of Inquiry dated 21 August 1995, according to which the Appellant was held responsible for the practically total failure of the Shelter construction project.

(b) The Board also noted that the Board of Inquiry established the role of the Appellant in the cover-up of the sub-standard construction which constituted gross negligence and that the Appellant failed to provide the Board with counter-productive evidence.

(d) In this context, the Board is of the opinion that the Administration has dealt within the framework of standing rules and regulations governing disciplinary measures and termination of staff members and accordingly, the Board could not establish that the Administration's decision to terminate the Appellant's appointment was motivated by prejudice or any other extraneous factors.

IV. RECOMMENDATION

14. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision and that the case be dismissed."

On 29 May 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Abu Khamis and informed him, in part, as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the decision to terminate your services was based on the findings of the Board of Inquiry. It noted further that you had not produced any evidence which rebutted the case against you. In the absence of any proof that the Administration's decision was motivated by prejudice or any other extraneous factors, the Board recommended that your appeal be dismissed.

I agree with the Board's conclusions and accordingly dismiss your appeal.

..."

On 21 July 1998, the Applicants filed with the Tribunal the application referred to above.

Whereas the Applicants' principal contentions are:

1. The Applicant Abboud did not engage in any wrongdoing. The evidence against him was fabricated or inconsequential and did not justify the termination of his services.

2. The charges against the Applicant Ali were based on fabricated evidence. He did not try to cover up the misuse of an Agency vehicle by the Finance Clerk and he did not engage in poor accounting practices for his own personal enrichment.

3. Even though members of his family dealt in rations, there is no evidence to support the BOI's findings that the Applicant Shehabi himself was involved in the buying and selling of rations. In any case, staff members are not prohibited from dealing in rations once such rations have been issued to refugees, and the Respondent could thus not base its decision to terminate the Applicant Shehabi's appointment on ration dealing.

4. Even if the Applicant Shehabi had been involved in the buying and selling of rations, his work as a health centre clerk was totally unrelated to such dealings and it could therefore not be argued that he had used his job to influence ration dealing.

5. The alteration of coupons on the distribution list was due to an error made by a social worker and not an attempt of fraud on the part of the Applicant Ghannam, and the alteration of coupons did not cause any harm to the Agency.

6. The BOI's finding that the Applicant Abu Khamis was responsible for the "practically total failure" of the construction work at the shelter construction project at Homs camp was erroneous as it was not he but a site engineer who was primarily responsible for the supervision of the project. Furthermore, given his other duties, he could not be at the site on a daily basis.

7. The findings of the BOI were premature, as the project was not yet complete at the time of the investigation and the Applicant Abu Khamis had not yet approved the payment of the final bills to the contractor.

8. The Applicant Abu Khamis never made the alleged statement that "Palestine refugees are not worthy of such shelter assistance ...", nor the statement allegedly made to the Director of UNRWA Affairs, "If you (could) as Director render a service to the Field Technical Office, I would stop shelter construction".

9. The adverse decisions taken regarding each of the Applicants were arbitrary, motivated by prejudice, and influenced by extraneous factors, in particular, the interference in the UNRWA operations by the General Authority for Palestine Refugees (GAPAR), and by an "outside politico-professional board".

Whereas the Respondent's principal contentions are:

1. An examination of the evidence taken by the BOI in relation to the Applicant Abboud supports its conclusions. These conclusions, in their totality, justify the disciplinary action taken against the Applicant Abboud.

2. In the absence of the Applicant Ali producing any convincing evidence that the factual basis for the disciplinary action taken against him was incorrect, the Respondent submits that the decision to issue him with two letters of censure for misuse of an Agency vehicle and for poor accounting practices was proper and should be upheld.

3. There is evidence that the Applicant Shehabi was involved in the buying and selling of rations. There is no evidence that the Applicant Shehabi ever sought or obtained the required approval from the Commissioner-General to engage in ration dealings. Furthermore, he received Special Hardship rations. This justified the termination of his appointment in the interest of the Agency.

4. The Applicant Ghannam's actions regarding the coupons on the distribution list caused the distribution of rations to persons who, on the face of the record, were not

entitled to receive such rations, and therefore, amounted to serious misconduct that justified the termination of his services.

5. The Applicant Abu Khamis was primarily responsible for the failure of the construction project involving 27 shelters in Homs camp, through a lack of supervision, and thus it was an appropriate exercise of managerial discretion to terminate his services in the interest of the Agency.

6. All five Applicants bear the onus of showing that the decisions they challenge are procedurally defective or vitiated by some other factor such as bias or prejudice. They have failed to clearly show the existence of any defect that impugns the decisions.

The Tribunal, having deliberated from 5 to 15 November 1999, now pronounces the following judgement:

I. The Applicants Abboud, Ali, Shehabi, Ghannam and Abu Khamis have filed a joint application. Because the Applicants' cases arise from related facts and raise similar issues, the Tribunal orders joinder of the cases.

Applicant Khalil Fadel Abboud

II. By letter of 1 June 1995, the Director of UNRWA Affairs informed the Field Administration Officer of his decision to convene a BOI to examine irregularities in the Central Area. All these irregularities pertained to the Special Hardship Programme that the Agency operated for the benefit of the refugees in the Central Area and concerned the following:

(a) A reported loss of 917 kgs. of flour during the March 1995 distribution;

(b) Reports by the local authorities of illegal rations being received and possible misappropriation of cash assistance;

(c) Reports of poor construction in progress for 27 shelter rehabilitation projects in Homs.

III. In his letter of 4 June 1995, the Director of UNRWA Affairs informed the Applicant Abboud that charges of misconduct had been made against him and against certain staff working for him in the Central Area. He also advised him that, pending the outcome of the investigation by a BOI of those charges, he was suspended from duty with pay, effective from that date, in accordance with the provisions of staff rule 110.2, this suspension being made without prejudice to his rights. He further advised the Applicant Abboud that, should the charge of misconduct or serious misconduct prove to be well founded, he might be subject to summary dismissal under staff regulation 10.3 or to termination or other disciplinary measures in accordance with staff rule 110.1 effective from the date of the letter.

IV. The BOI, having carried out its investigations and prepared its report, made certain findings or conclusions adverse to the Applicant Abboud as follows:

(i) That he had attempted to camouflage the theft of 917 kgs. of flour during the March 1995 distribution of rations;

(ii) That he failed to follow up a report made to him about distribution irregularities;

(iii) That he failed to report that another staff member (the Applicant Shehabi) was in the business of buying and selling rations;

(iv) That he had taken money which had been overpaid to a temporary assistant clerk;

(v) That he had failed to report a vehicle accident in an UNRWA motor car;

(vi) That he had allowed yet another staff member (the Applicant Ali) to use routinely an agency vehicle on a no cost basis.

The BOI reported its findings to the Respondent. The Respondent, having duly considered the said report, decided to terminate the Applicant Abboud's appointment for misconduct, pursuant to staff regulation 10.2. and Area staff rule 110.1, effective close of business on 6 July 1995.

V. It should be stated at this stage that, whilst the JAB which subsequently heard an appeal by the Applicant Abboud against the Respondent's decision to terminate his appointment for misconduct appeared to have taken the view that some of these findings were outside the terms of reference of the BOI, the Tribunal is satisfied that this view was mistaken. The terms of reference were couched in general language, which allowed the BOI to embark upon a wide ranging investigation, to examine any irregularities or misconduct which might come to light in the course of their investigation and to report thereon.

Furthermore, the Tribunal is of the view that the investigations that were being carried out by the BOI should not be considered analogous to a trial of the Applicant Abboud on an indictment. The BOI was in effect carrying out a wide-ranging inquiry into certain aspects of the work and efficiency of UNRWA in specified areas. The Tribunal is not aware of any sound legal principle which would suggest that if in the course of those investigations certain matters amounting to misconduct on the part of staff members should come to light, the Respondent should ignore those findings because the matters were outside the terms of reference of the BOI. Provided that a staff member was apprised of the allegations concerned and given a fair opportunity of responding to them, the Tribunal is of the view that the Respondent would be entitled to consider misconduct, if established, rather than to ignore it and in some way to treat it as being irrelevant.

VI. On 1 August 1995, the Applicant Abboud wrote to the Respondent and requested the reversal of the decision to terminate his appointment for misconduct. On 31 August 1995, the Respondent advised the Applicant Abboud that he had reviewed the decision but saw no

reason to change it.

VII. On 5 September 1995, the Applicant Abboud appealed to the JAB. In relation to the BOI's finding that the Applicant Abboud had attempted to camouflage a loss of commodities, the JAB noted that the Applicant Abboud's actions came after the loss was reported and not before. It expressed the opinion that the BOI's findings that the Applicant Abboud had taken money overpaid to a temporary assistant was irrelevant to the BOI's investigation.

In relation to the balance of the BOI's findings adverse to the Applicant Abboud, the JAB concluded that the BOI did not establish that he was involved in the distribution irregularities in the Central Area because it believed that there was insufficient credible evidence of his guilt. The JAB also noted that the Applicant Abboud's performance ratings, which were mostly very good, were inconsistent with the Administration's allegations.

Accordingly, the JAB recommended that the Applicant Abboud's appeal be upheld and that the disciplinary action taken against him be reversed.

VIII. The Respondent reviewed the report of the JAB. He concluded that, since the JAB had not apparently dissected and examined the evidence given to the BOI in any detail, he could not accept the JAB's conclusions as to the strength of that evidence in preference to the conclusions of the BOI, which had seen and heard all of the evidence as it was being given and was able to draw conclusions accordingly. Therefore, the Respondent rejected the JAB's conclusions and recommendations and affirmed the original decision to terminate the Applicant Abboud's appointment for misconduct.

IX. The Tribunal is satisfied that there was cogent evidence before the BOI sufficient to justify its findings against the Applicant Abboud. Where there was a conflict of evidence the BOI was the body most qualified to resolve the conflict, as it had seen and heard the witnesses.

X. The Tribunal is also satisfied that the BOI was entitled to conclude that the Applicant Abboud's calculation to explain at least half of the reported loss of flour during the March 1995 distribution was designed and intended to camouflage the existence and the extent of the loss. It was not some form of academic exercise designed to produce a hypothetical explanation for the loss, as he now contends. The Tribunal is satisfied that the BOI was entitled likewise to reject the legitimacy of the Applicant Abboud's explanation in relation to a failure to reimburse the overpayment which had been made to the temporary clerk. Having received reimbursement from that overpayment the Applicant Abboud was obligated to have in turn reimbursed UNRWA. It was not for the Applicant Abboud to decide that returning the money would take time and effort and cause embarrassment and that it should instead be applied towards the purchase of office files. The BOI was not even satisfied he had actually bought files.

XI. Accordingly, the Tribunal is satisfied that the Respondent was entitled to have accepted and acted upon the adverse findings of the BOI in so far as they concerned the Applicant Abboud and to reject the JAB's recommendations for the reasons stated in the Commissioner-General's letter of 19 March 1997 to the Applicant Abboud. The findings of the BOI clearly established misconduct on the part of the Applicant Abboud and justified the Respondent's decision to terminate his appointment.

XII. Allegations have been made against the manner in which the BOI carried out its investigations and drew its conclusions, based on unsupported allegations of bias and prejudice, often couched in far flung and extravagant terms. Allegations are made concerning the existence and activities of bodies described as "outside politico-professional boards", "outside factions", and the like. There are also allegations made in relation to the fabrication of evidence and to personnel having sinister motives for their actions. Likewise these are unsupported by any evidence. The Tribunal notes that there has been criticism regarding the

extent of the interference by GAPAR in the operations of UNRWA and regarding its influence over that Agency. However, there is nothing to suggest that such influence or interference could have relieved the Applicant of his responsibilities in relation to his duties with UNRWA or have justified his activities in so far as they were found wanting by the BOI.

XIII. In the circumstances of the case, the Tribunal is satisfied that the decision of the Respondent to terminate the Applicant Abboud's appointment was a decision which he was entitled to make by virtue of the findings of the BOI, that the Respondent was entitled to prefer those findings to the criticism made thereof by the JAB and is satisfied that there is no evidence of bias or prejudice or of improper motive such as would entitle the Tribunal to interfere with the Respondent's decision.

Applicant Taha Hussein Ali

XIV. As in the case of the Applicant Abboud, the Applicant Ali was a person whose conduct came under the scrutiny of the BOI established by the Director of UNRWA Affairs to examine irregularities in the Central Area.

As in the case of the Applicant Khalil Fadel Abboud, the Applicant Ali was initially suspended from duty pending the outcome of the BOI.

XV. On 28 June 1995, the BOI submitted its report to the Respondent. It found that the Applicant Ali had not been truthful in his testimony to the BOI about an incident in which commodities were transferred from Hama to Homs in February 1995, that he had failed to establish proper records to account for the sale of cartons left over after distributions and that he had routinely used an Agency vehicle without declaring private mileage and without paying the Agency in relation to his private usage thereof.

XVI. On 6 July 1995, the Respondent advised the Applicant Ali that in the light of the findings of the BOI, he had decided to terminate his appointment for misconduct pursuant to staff regulation 10.2 and Area staff rule 110.1, effective close of business on that day.

XVII. On 30 July 1995, the Applicant Ali wrote to the Respondent requesting a reversal of the decision to terminate his appointment for misconduct. On 28 August 1995, the Respondent advised the Applicant Ali that he had reviewed the decision but saw no reason to change it.

XVIII. On 31 August 1995, the Applicant Ali appealed to the JAB. Having concluded its investigations the JAB noted that the Applicant Ali had used an Agency vehicle for private purposes without declaring private mileage, and that he had not adopted proper procedures in relation to the sale of cartons left over after distribution. The JAB did not consider the BOI's finding that the Applicant Ali had been dishonest to it about the incident involving the transfer of commodities from Hama to Homs. The JAB concluded that the allegations in relation to the Applicant Ali's unauthorized private use of the Agency's vehicle as well as the allegation that he had failed properly to account for the sale of cartons left over after each distribution had been substantiated. However, it found that these contraventions were irrelevant to the issues under investigation, thereby impliedly finding that they were outside the terms of reference or the mandate of the BOI. In view of its findings, the JAB recommended that the decision to terminate the Applicant Ali's appointment for misconduct should be reviewed.

The Tribunal is of the view that the BOI's investigations should not be considered analogous to a trial of the Applicant on an indictment and reiterates its views on this issue expressed in paragraph V above relating to the Applicant Abboud.

XIX. Accordingly, the Tribunal is of the opinion that the adverse findings in relation to the private use by the Applicant Ali of the Agency's vehicle and his failure to keep proper records were not outside the terms of reference of the BOI and that the JAB erred in taking the view that no action was merited or permissable on those findings on the grounds that they were irrelevant.

XX. Having considered the report of the JAB, the Respondent agreed that there was no evidence that the Applicant Ali was involved in any irregularity in respect of the March 1995 distribution. Further, he was not convinced that there was unequivocal evidence that the Applicant Ali had been untruthful to the BOI. In relation to the other issues on which the termination of the Applicant Ali's services had been based, namely the misuse of the Agency vehicle and failing to keep proper accounting records for the sale of cartons, he concluded that termination for misconduct was an unduly severe punishment. He accepted the recommendation of the JAB that the decision be reviewed and in lieu of termination for misconduct, he directed that two written censures be sent to the Applicant Ali.

XXI. On 19 June 1997, the Applicant Ali was reinstated in the service of the Agency in the post of Clerk "C" and received payment of his salary for the period between the date of his separation until the date of his reinstatement.

XXII. The Tribunal considers that there was evidence which entitled the BOI to have made its findings adverse to the Applicant Ali in relation to his inadequate accounting practices and his private use of the Agency vehicle. The Tribunal is satisfied that those findings amounted to findings of misconduct rather than to innate inefficiency or incapacity. The Tribunal is further satisfied that the decision of the Respondent that two letters of censure should be issued to the Applicant Ali was fully justified.

XXIII. In this case, as in the case of the Applicant Abboud and many other recent cases, allegations have been made about the "sinister" activities of "outside politico-professional boards", "outside factions", and other "sinister" organizations alleged to exert malevolent influences throughout the Agency and to engage in evil machinations and in the fabrication of evidence and in far flung conspiracies to damage the reputation of the Applicant Ali and many of his colleagues. The Tribunal repeats yet again that there is no evidence to substantiate any of these assertions and that the Tribunal acts on evidence rather than on mere allegations. The Tribunal notes that there has been criticism with regard to the extent of the interference by GAPAR in the operations of UNRWA and its influence over that Agency. Yet there is nothing to suggest that such influence or interference could have relieved the Applicant of his responsibilities and duties with UNRWA or could have justified his activities in so far as they were found wanting by the BOI. There is no evidence to suggest that such influence or interference could have in any way justified the Applicant Ali's inadequate accounting procedures or his failure to account for the private use of the Agency vehicle. No such case has been made. The Tribunal is satisfied that there is no evidence to support the contention that the findings made against the Applicant Ali were motivated by prejudice or by improper motive.

XXIV. In light of the above, the Tribunal is satisfied that the letters of censure were appropriate and were lawfully issued. The Applicant Ali's claim for relief is denied.

Applicant Zakariya Ali Shehabi

XXV. The Applicant Shehabi was also implicated in the investigation carried out by the BOI to examine irregularities in the Central Area.

XXVI. The BOI found that the Applicant Shehabi had been involved in the business of buying and selling rations for a number of years, despite having been advised on several

occasions that those activities were in conflict with his duties as an UNRWA staff member, and that the Applicant had been seen taking SHC rations. It had evidence of the Applicant Shehabi having absented himself from duty on numerous occasions coinciding with distributions of rations near his place of work. The Applicant Shehabi had received a written warning about unauthorised absence from work as early as 15 May 1988 and had received a warning by the AOC on 20 July 1988 questioning his dealing in rations as a merchant, whilst being a staff member. There was another letter written in or around 1989 by the AOC warning him yet again about engaging in the ration business whilst a staff member, and noting the incompatibility of such action with his status as a staff member. The BOI saw this letter, which subsequently disappeared from the Applicant Shehabi's personnel file at the Area Office Homs. Finally the AOC had orally reprimanded the Applicant Shehabi about engaging in the business of ration buying and selling and had requested the Medical Officer not to allow him to take annual leave during times when distributions were taking place.

XXVII. In his testimony to the BOI, the Applicant Shehabi denied that he had ever been involved in the ration business but stated that he had lent money to family members who were engaged in the buying and selling of rations as merchants in a substantial way. He admitted that he continued to give money to his brother's business as a merchant right until the date of his testimony before the BOI in June 1995. The BOI believed that he had been present at distributions in Homs, in particular on days which are "historically reserved for merchants" and felt that the proximity between the Health Centre where he worked and the Distribution Centre would have allowed him to slip in and out of the Distribution Centre in Homs. It further found that, by virtue of his work registering "pregnant and nursing mothers" and recording births, he had access to the names of SHC which receive distributions.

The testimony of others that the Applicant Shehabi was very friendly with the AOC and the Deputy Chief, Field Relief and Social Service Programme and the fact that some of the Applicant Shehabi's family members were the largest merchants dealing in

Agency rations in Homs convinced the BOI that he was a central figure in the rations business there. They further noted that the Senior Medical Officer testified that whilst the Applicant was not engaged in the buying and selling of rations himself before he started to work for UNRWA, he believed that the Applicant Shehabi supplied his brother and his father-in-law with money for their business dealing in such rations.

The BOI was further influenced in its decision by an admission made by the Applicant Shehabi that he owned a multi-storey building which was being constructed across the street from the Distribution Centre.

In its report the BOI also mentioned that in 1990 the Applicant Shehabi had been arrested by the local authorities for smuggling. It stated: "There is testimony that the smuggled goods were in fact, UNRWA commodities. He was subsequently released". It also heard testimony from the AOC, that he had "caught [the Applicant] taking rations ... directly from the Area Registration and Distribution Officer (...) at a distribution ... in 1992-1993". It is interesting to note that the report of the BOI never evaluated the testimony of the AOC or indicated whether the BOI gave more credibility to the denials made by the Applicant Shehabi. The report does not indicate to what extent, if any, the BOI relied upon this evidence in making the findings adverse to the Applicant Shehabi. This is of particular concern to the Tribunal in light of the fact that the same Chairman of the BOI had in a related matter (Judgement No. 928, *Abdulhadi et al.*, (1999) concerning the Applicant Abdulhadi) expressed the view that the mere making of an allegation could by itself constitute sufficient grounds for dismissal or termination of an appointment, a view that was subjected to much critical comment in the judgement of the Tribunal in that case. One also wonders to what extent the BOI was influenced in the making of findings adverse to the Applicant Shehabi by the assertion that he had been arrested for smuggling in 1990, when there is nothing to indicate that he had ever been convicted of smuggling or had at that time dealt in UNRWA commodities. In fact the contrary is at least implied by the statement that he was "subsequently released". This suggests that he was never charged with any offence at that

time, let alone convicted.

Having considered all of the evidence, the BOI concluded that the Applicant Shehabi was in fact in the business of buying and selling rations and that he had used his position and knowledge gained in the course of his work to enrich himself and his family.

XXVIII. While the evidence against the Applicant Shehabi was sufficient in the view of the Tribunal clearly to arouse strong suspicion that he had in fact engaged in dealing in rations, the Tribunal is satisfied that the evidence was by and large circumstantial. The Tribunal is concerned as to the manner in which the BOI considered this evidence and arrived at its findings that the Applicant Shehabi had persistently dealt in the distribution of rations. The Tribunal is further concerned that in arriving at this conclusion, the BOI may have been influenced by or taken into account matters which were not properly evaluated or "proved". Had there been enough evidence to establish that he had been involved in the said activity, the Tribunal is satisfied that this would have sufficed to demonstrate a conflict of interest between the Applicant's duties as a staff member with UNRWA, justifying the termination of his services in the interest of the Agency. The Tribunal is clearly of the view that, had he been engaged in such activity, it would have besmirched the reputation of UNRWA and brought the Agency into disrepute.

XXIX. On 6 July 1995, the Respondent advised the Applicant Shehabi of the BOI's findings and of the Respondent's conclusions that he had compromised the Agency's image by dealing or *appearing to deal in* UNRWA rations. He had accordingly decided to terminate the services of the Applicant Shehabi in the interests of the Agency, effective close of business on that day. This decision suggests that the Respondent, like the Tribunal, entertained certain misgivings as to the manner in which the BOI had approached its deliberations and reached its conclusions. It appears to the Tribunal that the Respondent was hesitant in accepting the BOI's findings that the Applicant had actually dealt in commodities destined for SHC as he

adopted what is in effect a fallback or secondary position by basing his decision to terminate the Applicant Shehabi's appointment on his finding that the Applicant Shehabi had either dealt in or *appeared to have dealt in* UNRWA rations.

XXX. Whilst the standard of proof necessary to establish either misconduct or grounds sufficient to justify termination in the interests of the Agency is not the same as that needed to establish criminal activity - namely proof beyond reasonable doubt - the Tribunal is not satisfied that the BOI's approach to an evaluation of the evidence was appropriate in this case. In order to find wrongdoing on the basis of circumstantial evidence it is necessary to show that the conduct established is not reasonably consistent either with an innocent explanation or with one at variance with the misconduct charged. When there are real doubts, the Tribunal is satisfied that the proper approach is to give the benefit of those doubts to the person against whom the accusation is made.

XXXI. In his submissions to the Tribunal, the Applicant Shehabi admits that his family members are in the business of buying and selling rations and that he has loaned them money to assist in their business, but he denies any active involvement in buying or selling rations himself. He argues that it is quite acceptable for him to have an involvement in his family's business because other staff members also have second jobs.

The Tribunal is satisfied that second jobs are permissible only in limited circumstances. Area staff rule 101.4 permits outside employment provided that such employment or outside activity has the prior approval of the Commissioner-General and provided that the outside activities in question are not incompatible with the Agency's interests. The Tribunal is further satisfied that at no time did the Applicant Shehabi seek or obtain an approval from the Commissioner-General to engage in the business of dealing in rations.

XXXII. When the Respondent considered the report of the BOI he determined to terminate the Applicant Shehabi's appointment in the interests of the Agency. Against that decision the Applicant Shehabi appealed to the JAB. As to the allegation that he had been buying and selling rations, the JAB was of the view that there was no sufficient incriminating evidence, except hearsay. With reference to his personnel file, the JAB found no documents establishing that the Applicant Shehabi had been cautioned against or prohibited from engaging in such activity. The JAB took the view that although the Applicant Shehabi's duties included verification of a patient's eligibility for medical services prior to their admission to the Health Centre that this fact, per se, was not sufficient evidence that he had dealt in rations. It further opined that the fact that he had absented himself from work without authorisation did not prove that he had used his absence for the purpose of going to the nearby Distribution Centre and engaging in dealing there.

XXXIII. The Applicant Shehabi had at all times before the BOI denied that he had dealt in rations himself. He may have weakened his case or made a bad impression before the BOI by appearing to maintain a position that, even if he had, this was not impermissible.

XXXIV. Having received the report from the JAB, the Respondent wrote to the Applicant Shehabi by letter of 19 March 1997 stating, *inter alia*, as follows:

> "... I have carefully reviewed the Board's report and noted its conclusions. ...
>
> The Board appears to have misread the Board of Inquiry's report on the issue of your dealing with rations. One written warning about that activity was annexed to the report, another was seen by the Board of Inquiry but was subsequently removed from your file. The Area Officer also gave evidence that he gave a number of oral warnings to you about your activities and that he caught you taking rations with about twenty/twenty-five ration cards. Taken together with the Board of Inquiry's other conclusions such as your presence at a particular distribution, I am of opinion that there is sufficient credible evidence that you are involved in the business of

buying and selling rations. Accordingly, I do not accept the Board's conclusion and I recommend your appeal be dismissed.

..."

XXXV. The Tribunal, with some hesitation, is of the view that the findings of the BOI that the Applicant Shehabi had been dealing in rations was flawed. It is of such a view, because it appears to the Tribunal that the BOI had been willing to draw unwarranted conclusions from what was by and large circumstantial evidence. It believes that the BOI was motivated to a significant degree by the evidence of the 1990 smuggling allegation which had not led to a charge, let alone to a conviction. It also believes that the BOI was motivated by the evidence of the AOC in relation to the incident which allegedly occurred "one morning sometime in 1992/1993", when it does not appear to have evaluated this evidence. In the opinion of the Tribunal the findings of the BOI against the Applicant Shehabi are at the least unsatisfactory as they only note "that there was testimony", without indicating that the testimony had been evaluated or accepted. This leaves the Tribunal with the uneasy feeling that the BOI was influenced in its findings, merely because the allegation had been made. Similarly the Tribunal is uneasy about the fact that the alleged 1990 smuggling incident was mentioned, even though it did not result in any finding adverse to the Applicant Shehabi. The mention of this incident does however suggest that the BOI had been to some extent influenced by the mere fact that this allegation had once been made.

XXXVI. In the view of the Tribunal the BOI appears to have been largely inspired to make its findings adverse to the Applicant Shehabi on the basis of inferences improperly drawn from circumstantial evidence, rather than on the evidence of the AOC. The Tribunal is not satisfied that the findings adverse to the Applicant Shehabi were soundly based on cogent evidence. It is of the view that the approach taken by the BOI to the circumstantial evidence was flawed and inappropriate. It appears that to a large extent the BOI was motivated by

matters which had not been properly established and that it was influenced by some allegations in respect of which no actual findings had been made.

XXXVII. The Tribunal is not satisfied that the BOI's approach to its finding that the Applicant Shehabi had been personally involved in dealing in rations was the correct one so it now must examine the approach of the Respondent to the evidence, when he reviewed his decision in the light of the findings and recommendations of the JAB and determined to dismiss the appeal. It should be noted that when so doing, the Respondent had recited as his reason his opinion that there was sufficient credible evidence that the Applicant Shehabi was involved in the business of buying and selling rations and he summarised what some of that evidence was.

XXXVIII. It is clear to the Tribunal that what the Respondent meant was that the Applicant Shehabi was culpably or knowingly involved in that business in such circumstances as would bring the Agency into disrepute. The Tribunal is satisfied that what the Respondent had found was that by his conduct he created or allowed such an impression to arise and that by so doing he was guilty of misconduct.

XXXIX. The Tribunal is satisfied that this conclusion on the part of the Respondent was justified. The Applicant Shehabi admitted to financial links to his family business, which dealt in UNRWA rations. He admitted to lending money to this business, which continued to the time of the hearing by the BOI. Whilst the Applicant Shehabi denied that he personally dealt in such rations he also adopted the position that even if he had this hardly justified a disciplinary sanction, since many UNRWA staff had second jobs and were not disciplined. He argued that, since the Administration has acknowledged that it cannot not police or control what becomes of rations once they are in the hands of intended receipients, there should be a virtual "free for all" and that the Administration should abandon all attempts to stamp out or

discourage such dealings, to the extent that UNRWA employees who deal in such rations should be exempt from sanctions or disciplinary measures. The Tribunal strongly rejects the logic of such an argument. The Administration is entitled to maintain the view that such practices should be discouraged even if they are hard to police and realistically cannot be stamped out.

XL. The Tribunal is satisfied that the evidence relied upon by the Respondent was such as entitled him to conclude that the Applicant was involved in the business of dealing in rations and to conclude that this compromised the Agency's image and brought it into disrepute. He was clearly entitled to view the misconduct as all the more serious because of the many warnings which he was satisfied had been given to the Applicant Shehabi and which he had failed to heed. Even in relation to his admitted ownership of the building under construction in the vicinity of the Distribution Centre the Applicant Shehabi has admitted that it was intended to accommodate a shop at street level and that he and his brother would reside in apartments overhead. In the view of the Tribunal there was ample evidence that the Applicant Shehabi had failed to appreciate or conform to the standards expected of a person in his position. He failed to take even elementary steps to distance himself from appearing to be involved in the family business or to distance himself from activities which supported his apparent and actual involvement therein.

XLI. In light of the above, the Tribunal is satisfied that the Respondent was entitled to terminate the Applicant Shehabi's appointment in the interest of the Agency.

Applicant Hassan Mahmoud Ghannam

XLII. The Applicant Ghannam was also a subject of the investigation carried out by the BOI, which had been convened by the Director of UNRWA Affairs to examine irregularities in the Central Area.

XLIII. The BOI found that the Applicant Ghannam had fraudulently altered the Distribution List of January 1995 in Lattakia by manipulating coupons, and that he had been untruthful to it about his reason for doing so. It also found that he had hired his brother as a casual employee and that, contrary to instructions, he had continued hiring a bus from a relative, for home-office-home transport during the summer months, when transport was required for one staff member only. The BOI further found that he had employed a relative as a labourer on the Distribution Team, which the Respondent claims was contrary to the Staff Rules.

XLIV. On receipt of the report from the BOI the Respondent decided to terminate the services of the Applicant Ghannam for misconduct under Area staff regulation 10.2 and Area staff rule 110.1, effective close of business on 6 July 1995.

XLV. On 27 July 1995, the Applicant Ghannam duly wrote to the Respondent objecting to what he described as arbitrary termination and asked that the decision be reversed. On 24 August 1995, the Respondent wrote to the Applicant Ghannam informing him that the decision to terminate his services would not be changed. The Applicant Ghannam duly appealed that decision to the JAB.

XLVI. The JAB having carried out its deliberations and examined the documents concluded, *inter alia*:

(a) That the so called forged coupons (being the documents at the centre of the forgery allegation) were coupons of a different nature resulting from a mistake of recording that was corrected and that there was no sufficient evidence of forgery.

(b) The Applicant Ghannam had admitted having provided a casual job for two days for his brother and denied having hired any other relative. Area staff regulation 104.3, referred to by the BOI in its report deals with the appointment of Area staff members only so that it had no application or relevance to this complaint.

(c) The contract in relation to the bus for home-office-home transport was the responsibility of the Supply and Transport Department and not that of the Applicant Ghannam. There was no evidence as to the bus owner being a relative of the Applicant Ghannam.

In view of its findings, the JAB made a recommendation that the administrative decision appealed against be reversed.

XLVII. On receipt of the JAB report, the decision to terminate the Applicant Ghannam's services for misconduct was duly reconsidered by the Respondent. In relation to the issue of hiring relatives, the Respondent agreed with the JAB that Area staff rule 104.3 was not applicable to the hiring of casual employees, like the Applicant's brother. In relation to the bus rental, he noted that in correspondence the Applicant Ghannam had provided a reasonable explanation for so doing and that, more importantly, allegations of wrongdoing in relation thereto had not been put to the Applicant Ghannam by the BOI, hence depriving him of due process by denying him an opportunity to make a defence. However, in relation to what the Respondent described as the most significant issue, that of the forgery of coupons on the Lattakia Distribution List of January 1995, he noted that the Applicant Ghannam had admitted altering the list, that his explanation as to why he did so had not been accepted by the BOI, and that the JAB had provided no indication as to why it characterised the Applicant Ghannam's actions as "a mistake". Accordingly, he rejected the conclusion and recommendation of the JAB that the decision to terminate the Applicant Ghannam's services should be reversed and dismissed the appeal.

XLVIII. The only issue then before the Tribunal is that of the forged coupons. When confronted by the BOI with the allegedly forged coupons, the Applicant Ghannam admitted that he had stuck new (correct) coupons over incorrect coupons which had been affixed to the Distribution List when the rations were issued. The Applicant Ghannam explained that he

had stuck new correct coupons over the incorrect coupons as a "correction" of the Distribution List in conjunction with a Social Worker because he believed that this was the instruction of the former Area Relief and Social Services Officer as being appropriate action to take in such circumstances. The Social Worker's testimony was to the contrary, namely that the Applicant Ghannam had alone covered up the incorrect coupons with new coupons and that he had told her that the Distribution labourers had made mistakes when collecting the coupons at the Distribution.

XLIX. At this juncture the Tribunal should explain the function of the coupons and their importance in proper record keeping. Each Distribution has a number and each SHC individual must present the correct coupon to receive a ration. These coupons are then stuck on to the Distribution List as evidence that a ration has been given to a refugee. The Distribution List with coupons attached is obviously an important official Agency record. The Respondent argued that by the Applicant Ghannam's admitted actions, the Applicant Ghannam was attempting to obscure errors and possible misconduct by other staff members in the Distribution process. This is the view which appears to have been taken by the BOI. In the opinion of the Tribunal the Respondent was clearly entitled to take this view. As to the conflict of evidence between the Applicant Ghannam and the Social Worker, it was for the BOI, which heard their respective testimony and observed their respective demeanours, to choose which should be believed. The Tribunal is satisfied that the BOI was entitled to accept the Social Worker's testimony in preference to that of the Applicant.

L. The Applicant Ghannam asserts that there was no double issue of rations as a result of his actions and thus no loss or harm to the Agency or the refugees. He submits accordingly that he cannot be said to have forged or fraudulently altered the Distribution List and that at worst he made a mistake. The Tribunal cannot accept this proposition. The Tribunal is satisfied that for this action to constitute misconduct it is not necessary to have

established actual loss resulting from the Applicant Ghannam's actions. Indeed, it appears that the placing of the correct coupons over the incorrect or out of date coupons was detected and accordingly the Agency was not deceived by the Applicant Ghannam's attempted cover up. What is important is that the Applicant Ghannam's actions had the potential to hide serious irregularities and that he had taken those actions without proper justification. In the view of the Tribunal the Respondent was clearly entitled to take the position that the Applicant Ghannam's actions constituted misconduct serious enough to justify the decision to terminate his services.

LI. Again, in this case, vague and unspecific allegations have been made against the malevolent influence and "sinister" activities of "outside politico-professional boards", "outside factions" and the like and also allegations of a vague and unspecific nature have been made relating to the fabrication of evidence and of intimidation. The Tribunal repeats that it acts on evidence and facts rather than on mere unsubstantiated assertions. The Tribunal notes that there has been criticism regarding the extent of the influence of GAPAR in the affairs of UNRWA and regarding the extent of its interference, but there is no evidence that such influence or interference justified the activities found against the Applicant Ghannam originally by the BOI and subsequently by the Respondent. A complaint has been made on behalf of the Applicant Ghannam that the Respondent's actions were motivated by bias or prejudice, but the Tribunal again repeats that there is no evidence to substantiate this. The Tribunal is satisfied that the decision of the Respondent to terminate the Applicant Ghannam's services for misconduct was reached validly and properly and on appropriate evidence, and without evidence of bias, prejudice or consideration of extraneous matters by the Respondent. The Applicant's claim is dismissed.

Applicant Ass'ad Khalil Abu Khamis

LII. Like the other Applicants, the Applicant Abu Khamis was investigated by the BOI, convened by the Director of UNRWA Affairs, to examine irregularities in the Central Area.

LIII. As Maintenance Engineer, the Applicant Abu Khamis held a crucial position in the chain of supervisory responsibility in relation to the contract to repair and construct refugee shelters in Homs. The chain of supervision may be described as starting with a Site Engineer who was responsible to the Applicant Abu Khamis. While it is clear to this Tribunal, having considered the report of the BOI, that the attendance of the Applicant Abu Khamis on site was not expected to have been on a daily or very frequent basis, the Tribunal is satisfied that the Applicant bore the responsibility of supervising the Site Engineer.

LIV. The Tribunal is further satisfied that the BOI's conclusions as to the unacceptable quality of the construction were fully supported by cogent evidence, which the BOI was entitled to accept. In particular, the Tribunal is satisfied that there was ample evidence to support the BOI's findings of significant departures from the contract specifications, the unacceptable deficiencies in the strength and density of concrete, the weak and inadequate roof slabs, the failure to have the concrete used therein properly cured and the inadequate thickness and strength in load bearing walls.

LV. The Applicant Abu Khamis argues that he should not have been held responsible for these defects on grounds which may be summarised as follows:

(a) That the Site Engineer rather than the Applicant should be considered primarily responsible because the Site Engineer "was whole time on site";

(b) That he was unable to attend on site on sufficient occasions to give adequate supervision because his onerous duties had him elsewhere for most of the time; and

(c) That the findings of the BOI were premature in that they embarked upon their considerations and findings before the construction project was completed, and that such defects as existed might have been rectified by the contractor before final payment was made.

He further takes issue with the description of the project as being "a practically total failure". He complains about the expense incurred by the BOI in having certain technical tests and reports commissioned and maintains that the shortcomings alleged in relation to the construction of the project were inspired or instigated by GAPAR and by "an outside faction" in pursuance of a conspiracy against the interests of "loyal staff members".

LVI. The BOI found that the quality of the construction at the time of its inquiry was poor and that the work done was substandard. It also found that there were serious departures from the specifications. It found significant failures on the part of the Applicant Abu Khamis in relation to supervision and concluded that little overall supervision had in fact been carried out by him. The BOI found serious failures on his part to report to his superiors. According to the report, there were serious failures in relation to record keeping and the undertaking of periodic tests for which the Applicant Abu Khamis had some responsibility. The BOI found that the Applicant Abu Khamis had not supervised the Site Engineer or the construction staff and that he had not followed up the clear written instructions from the ex-Field Technical Officer (FTO) that actual site supervision was to be carried out by the Area Maintenant Engineer (AME). He took it upon himself to supervise the construction. Having pre-empted the site supervision function which was to be carried out by the AME, the Applicant Abu Khamis failed to exercise due diligence to ensure that the work was acceptable. The BOI found that his visits to the site for supervisory purposes were less than one time per month on the average and concluded that this demonstrated gross negligence on his part and accounted for the dismal results in the construction quality.

The BOI concluded that his failure to assign anyone to follow up on more routine and consistent site supervision established that he did not want anyone to be involved or that he did not care. It found that he, as the staff member in overall charge of the shelter construction, failed to ensure that the terms of the contract were adhered to and that Agency procedures were followed in the progress of the construction. The BOI also found that he had a role in the cover-up of substandard construction, when he was despatched by the FTO to check on the quality of the construction and reported that the first thirteen shelters were okay, although at least ten of these had either to be demolished or to have the roof slabs replaced or strengthened.

LVII. The BOI further noted with concern a statement it found he had made at a meeting of officers of the Technical Department that "Palestine Refugees are unworthy of such assistance by the Technical Department for shelter construction" and a further statement made to the Director of UNRWA Affairs "If you (could) as Director render a service to the Field Technical Office, I would stop shelter assistance".

LVIII. Having considered the report of the BOI, the Respondent decided to terminate the Applicant Abu Khamis's appointment pursuant to Area staff regulation 9.1 in the interests of the Agency. The Applicant duly appealed against that decision to the JAB. The JAB noted that the Respondent's decision was based on the findings of the BOI that the Applicant was responsible for the "practically total failure" of the shelter construction project. It further noted the BOI's findings concerning the role of the Applicant in the cover-up of the substandard construction and noted that the Applicant had failed to produce "Counter-productive evidence". It expressed the opinion that the Administration had dealt with the Applicant within the framework of Area Staff Regulations and Rules governing disciplinary measures and termination of staff members. Accordingly, it could not establish that the

decision to terminate the Applicant's appointment was motivated by prejudice or other extraneous factors. The JAB recommended that this decision be upheld and that the case be dismissed.

LIX. The Tribunal has carefully considered the evidence. It is satisfied that the BOI's findings adverse to the Applicant were based on cogent evidence and that there is no reason to disturb those findings. The Tribunal can find no evidence to establish any malevolent conspiracy of the sort alleged by the Applicant and finds no merit in his submission that the findings of the BOI were in any way premature. It is satisfied that there were many serious and substantial defects and shortcomings in relation to the construction work and a failure to comply with the specifications pertaining thereto and that there was ample evidence to find that the Applicant Abu Khamis was grossly negligent in his supervisory capacity and that in effect he participated in "a cover-up". It matters little that he quibbles with the description of the project as being "practically a total failure". The project was to be undertaken in accordance with agreed specifications. The Applicant Abu Khamis had defined duties in relation to its supervision and the Tribunal is satisfied that there was ample evidence that he was in grave dereliction of those duties.

LX. The Tribunal is further satisfied that the dereliction found by the BOI was in the nature of misconduct rather than innate inability or incapacity and that under the circumstances the Respondent was entitled to terminate his appointment in the interest of the Agency.

LXI. Therefore, the Applicant Abu Khamis' claim is dismissed.

LXII. For the foregoing reasons, the application of the Applicants Abboud, Ali, Shehabi, Ghannam and Khamis is rejected in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 15 November 1999

Maritza STRUYVENBERG
Executive Secretary